

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE:

B-217413

DATE: January 9, 1985**MATTER OF:**

Automatic Data Processing, Inc.

DIGEST:

There is no legal basis to object to a below-cost offer. Whether an offeror can meet contract requirements in light of its low price is a matter of offeror responsibility, the affirmative determination of which is not reviewed by GAO except in circumstances not present in this case.

Automatic Data Processing, Inc. (ADPI), protests the possible award of a fixed-price contract to James Frick Associates (Frick) under request for proposals No. 84-R-63 issued by the United States Department of Agriculture (USDA). ADPI contends that Frick should not be awarded this contract because Frick cannot perform at the price which it offered. We will not consider the protest.

The submission of a below-cost offer is not illegal and provides no basis for challenging an award of a firm fixed-price government contract to a responsible prospective contractor, since such a contract is not subject to adjustment based on the contractor's cost experience during performance and, thus, places no obligation on the contracting agency to pay more than the price at which contract award is made. See Everhart Appraisal Service, Inc., B-213369, May 1, 1984, 84-1 C.P.D. ¶ 485; Ted L. Biddy and Associates, Inc., B-209297; B-209297.2, Apr. 22, 1983, 83-1 C.P.D. ¶ 441. Moreover, there are various valid motivations which may influence a firm to offer a below-cost price. 50 Comp. Gen. 788 (1971).

Whether the low offeror can perform the contract at the price offered is a matter of responsibility. Prior to award, the contracting officer must make the affirmative determination that the prospective awardee is a responsible contractor. Federal Acquisition Regulation § 9.103(b), 48 Fed. Reg. 42,102, 42,142, (1983) (to be codified at 48 C.F.R. § 9.103(b)). Our Office does not review protests against affirmative determinations of responsibility, unless either possible fraud or bad faith on the part of the procuring officials is shown or the solicitation contains definitive responsibility criteria which allegedly have been

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misapplied. Management Consulting Inc., B-216299, Sept. 12, 1984, 84-2 C.P.D. ¶ 288. There is no allegation of the latter and ADPI's contention that an award to Frick would indicate "an act of bad faith by USDA since the great price discrepancy between the low bidder and the other bidders requires at least a preaward audit . . ." falls short of the requisite showing of possible fraud or bad faith. See Management Consulting, Inc., B-216299, supra; Sol/Mart, Inc., B-209507, Nov. 8, 1982, 82-2 C.P.D. ¶ 419.

The protest is dismissed.

Harry R. Van Cleve

Harry R. Van Cleve
General Counsel